Memorandum

U.S. Department
of Transportation

**Federal Highway
Administration**

Subject: **ACTION:** Procurement Waiver Best Value Selection
of P3 Co-developer Under Special Experimental
Project (SEP) 14

Date: July 6, 2012

From: David A. Nicol
Director, Office of Program Administration

Reply to
Attn. of: HIPA-30

To: Mr. John M. Cater
Division Administrator
Lakewood, CO

This is in reference to Mr. Shaun Cutting's July 6, 2012 email that forwarded a request from the Colorado Department of Transportation (CDOT) to waive the requirements of 23 USC 112 and 23 CFR 172 for a project to complete the development phases necessary to secure a public-private concession agreement which would finance, design, and construct improvements in the I-70 Mountain Corridor.

The CDOT is requesting waivers from the above requirements in order to allow CDOT to:
- Consider cost and risk criteria in the evaluation of proposals.
- Use "best value" in consultant evaluation and ranking.
- Retain the services of a firm to perform construction management in the future, without advertising and competing this work.
- Mandate that all proposers accept a stipend in exchange for CDOT to own and use ideas in the non-selected firms' bids.
- Require the selected firm to reimburse CDOT for costs previously incurred.

CDOT indicates that the first phase of the procurement process will be solely qualifications-based, and that the order of negotiations will comply with the spirit of the Brooks Act. That is, negotiations will proceed with only the top ranked firm, and should these negotiations be unsuccessful, CDOT will end negotiations with that firm and proceed to negotiate with the second highest ranked firm.

This waiver is approved under our SEP-14 innovative contracting experimental program. Please ensure that CDOT provides annual evaluations summarizing their experiences with the use of this innovative "best value" selection process.

Thank you for the opportunity to review and comment on this SEP-14 request.